

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No. 3:17-CV-00652

SNYDER’S-LANCE, INC. and
PRINCETON VANGUARD, LLC,

Plaintiffs,

v.

FRITO-LAY NORTH AMERICA,
INC.,

Defendant.

**MOTION FOR EXTENSION OF TIME
TO FILE REPLY IN SUPPORT OF
PLAINTIFFS’ CROSS-MOTION FOR
SUMMARY JUDGMENT**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and Rule 7.1 of the Local Civil Rules, Plaintiffs Snyder’s-Lance, Inc. and Princeton Vanguard, LLC (together, “Snyder’s-Lance”) respectfully move the Court for an extension of time, up to and including August 28, 2019, in which to file their Reply in support of their Cross-Motion for Summary Judgment. In support of this Motion, Snyder’s-Lance shows the Court as follows:

1. On August 30, 2018, Defendant Frito-Lay North America, Inc. (“Frito-Lay”) filed its Motion for Summary Judgment. [D.E. 28].
2. On October 29, 2018, Snyder’s-Lance filed its response to Frito-Lay’s Motion for Summary Judgment [D.E. 33] and a Cross-Motion for Summary Judgment. [D.E. 34].
3. On April 29, 2019, the Court issued an Order directing Frito-Lay to file its Reply in support of its Motion for Summary Judgment and its Response to Snyder’s-Lance’s Cross-Motion for Summary Judgment on or before June 14, 2019, and directing Snyder’s-Lance to file its reply in support of its Cross-Motion for Summary Judgment on or before July 26, 2019. [D.E. 69].
4. On June 14, 2019, Frito-Lay filed its Reply in support of its Motion for Summary Judgment [D.E. 72] and its Response to Snyder’s-Lance’s Cross-Motion for

Summary Judgment. [D.E. 71]. Frito-Lay's Response to Snyder's-Lance's Cross-Motion for Summary Judgment was accompanied by the Expert Report and Declaration of Professor Isabella Cunningham [D.E. 71-9], and its accompanying appendices. [D.E. 71-11 – D.E. 71-16].

5. According to her Expert Report and Declaration, in December 2018 Dr. Cunningham performed a new consumer survey on Frito-Lay's behalf directed to the issue of whether the name PRETZEL CRISPS has acquired secondary meaning (hereinafter, the "Cunningham Survey"). [D.E. 71-9 at 3-4]. Frito-Lays' opposition to Snyder's-Lance's cross-motion for summary judgment relies on the Cunningham Survey to support Frito-Lay's arguments with respect to the issue of secondary meaning. *See* Frito-Lay Br. [D.E. 71] at 11-12, 22-23.

6. To facilitate its review and evaluation of the Cunningham Survey and Frito-Lay's arguments with respect thereto, Snyder's-Lance requested the data files underlying the Cunningham Survey from Frito-Lay on July 9, 2019. Frito-Lay provided the requested data files on July 11, 2019.

7. To prepare its Reply in Support of its Cross-Motion for Summary Judgment, Snyder's-Lance requires additional time to review and analyze the data files underlying the Cunningham Survey, and requests to extend the deadline to file its Reply from the current deadline of July 26, 2019 to August 28, 2019.

8. Snyder's-Lance has conferred with Frito-Lay, and Frito-Lay does not oppose the requested extension.

9. Snyder's-Lance is making this motion before the current deadline to file its Reply in Support of its Cross-Motion for Summary Judgment has expired. Snyder's-Lance respectfully submits that good cause exists for the requested extension. Snyder's-Lance makes this motion in good faith and not for the purpose of delay.

10. A Proposed Order granting the requested relief is attached hereto for the convenience of the Court and is being submitted to the Court via CyberClerk.

WHEREFORE, Snyder's-Lance respectfully requests that the Court issue an Order that extends the deadline to file its Reply in Support of its Cross-Motion for Summary Judgment, up to and including August 28, 2019.

This 16th day of July, 2019.

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